

PDC Interpretation

Approval Date :	July 25, 2000	Number:	00-03
Status:	Approved	Supersedes:	Not Applicable
References:	RCW 42.17.130, 42.17.530 Canons of Judicial Conduct 7, 4 Ethics Advisory Committee Opinion No. 88-3	Approved by:	The Commission
See Also:	Chapter 42.52 RCW Washington State Court General Rule (GR) 10 <i>Judicial Conduct Reporter</i> (Spring 1984)		

Use of Robes in Campaign Literature By District and Municipal Court Judges Use of Courtrooms in Campaign Literature by District and Municipal Court Judges

Under what circumstances may elected district and municipal court judges wear their robes in campaign literature, given the prohibitions in RCW 42.17.130 on the use of public facilities in campaigns?¹

Under what circumstances may district and municipal court judges use courtrooms in campaign literature, given the prohibitions in RCW 42.17.130?

Robes

According to the Office of the Administrator for the Courts, in performing court business, district court judges may wear robes purchased at public expense, or may purchase their own robes with private funds. They may wear their robes to perform duties outside the courtroom, such as officiating at weddings. The Commission has been advised there are no local court policies governing the use of the robes. Copies of official photos of judges wearing their robes may be available to the media and the public in some counties; in other counties, the judges may incur the costs of producing photographs. It has come to the Commission's attention that these district court judges may use photographs of themselves, wearing their robes, in campaign literature.²

¹ This interpretation does not address any of the campaign finance and reporting requirements for judicial candidates and campaigns, which are otherwise still required under chapter 42.17 RCW.

² Information on purchase of robes for municipal court judges was not obtained, however, for the purposes of this interpretation it will be presumed that some robes are purchased with public funds and some with private funds.

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter 42.17 RCW. RCW 42.17.130 forbids the use of public offices and agency facilities in campaigns, and reads in part as follows:

No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion or opposition to any ballot proposition.

This statute generally prohibits the use of public property for campaigns for most elected officials. Since January 1, 1995, however, RCW 42.17.130 has been superseded as to state officers and employees with the adoption of RCW 42.52.010 as part of the State Ethics Law. RCW 42.17.131. The State Ethics Law at RCW 42.52.180 also prohibits state officers from using state resources for political campaigns. RCW 42.52.010(18) defines "state officer" to include judges of the superior court, judges of the court of appeals, and justices of the supreme court. The State Commission on Judicial Conduct has the authority to enforce RCW 42.52 against those judges subject to that act, pursuant to RCW 42.52.370.

Therefore, with respect to judges, RCW 42.17.130 now applies only to the remaining levels of judges, and they are district court judges and municipal court judges.

Another statute, RCW 42.17.530 (false political advertising) provides that:

(1) It is a violation of this chapter for a person to sponsor with actual malice:

...

(b) Political advertising that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.

Judges at all levels are subject to the Canons on Judicial Conduct, including Canon 7, which limits political activities of judges, and Canon 2, which prohibits judges from using their positions to advance their personal interests. Under the courts' General Rule 10, the Supreme Court Chief Justice also appoints an Ethics Advisory Committee, which is designated as the body to give advice with respect to the application of the Code of Judicial Conduct to the officials of the judicial branch. The Ethics Advisory Committee issued Opinion No. 88-3 that reads as follows:

Question:

May a district court judge, who is running for a superior court position, be pictured in campaign literature in a judicial role if the caption of the picture indicates that the judge is a district court judge?

Answer:

It is proper under CJD Canon 7(B)(10)(c) and (d) for a district court judge, who is running for a superior court position, to be pictured in campaign literature in a judicial robe so long as the caption of the picture indicates that the judge is a district court judge, since this disclosure of the district court position would prevent the material from being misleading or from being misconstrued.³

The Commission is also aware of other authorities which provide that it is common and appropriate for judges to wear their judicial robes in campaign literature, even when there are state laws limiting the use of public property for campaigns, so long as the pictures are not misleading and the picture's caption indicates the office and dates served. See, for example, *Judicial Conduct Reporter* (Spring 1984).

The Commission recognizes that the intent of chapter 42.17 RCW is to maintain public confidence in government at all levels, including during election campaigns. The Commission also recognizes that certain activities of the judiciary have traditionally had oversight by that separate branch of government. Reading RCW 42.13.130 together with the Ethics Advisory Opinion, the Commission concludes that the opinion is consistent with goal of RCW 42.17.130, which is to provide independent oversight on the limits on the use of public facilities and property in campaigns such as for district court judge. The Ethics Advisory Committee, the Commission on Judicial Conduct, and the courts provide that oversight on the use of judicial robes in campaigns. For consistency purposes for all levels of judges, the Commission will defer to the interpretation in Opinion 88-3 for the use of robes in campaign literature for judges subject to RCW 42.17.130, which would include district court judges. The Commission also concludes that it would be a violation of RCW 42.17.530 for a judicial candidate who does not hold a judicial office to be photographed in a robe, because such a picture would falsely suggest incumbency. The Commission will also apply this interpretation to any campaigns of municipal court judges.

Courtrooms

The Commission's regulation at WAC 390-05-271(2) provides in pertinent part that:

RCW 42.17.130 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses...

The Commission concludes that it is not a violation of RCW 42.17.130 for judicial candidates to use the courtroom for depictions in campaign advertising literature so long as the

³ The Ethics Advisory Committee has also issued opinions regarding judicial campaigns generally and the applicability of the reporting requirements of chapter 42.17 RCW (Opinion No. 98-10); the use of public resources with respect to endorsements and job titles (Opinion No. 93-9); the use of court personnel in campaigns (Opinion 86-9); and activities by judges regarding local bond issues (Opinion No. 93-32 and 94-10). The opinions are available at www.courts.wa.gov/ethics.

facility is available to all persons on a non-discriminatory, equal-access basis. This includes being photographed on the bench.

Supporting Documentation:

- [Public Disclosure Commission memo](#) (13KB in PDF format)
- [Attorney General's Office memo](#)